THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.2629 of 1996

Date: 15-09-2005

Between:

1. M.Ram Narayana, S/o Harish Chander, H.No5-5-212/6/1, Patel Nagar, Gandhi Bhavan, Nampally, Hyderabad and four others

... PETITIONERS

a n d

1. The Mandal Revenue Officer, Musheerabad Mandal, Hyderabad and two others

...Respondents

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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ORAL ORDER:

This petition is filed questioning the notice dated 05-02-1996 issued under Section 7 of the A.P. Land Encroachment Act, 1905 (hereinafter referred to as 'the Act') by the Mandal Revenue Officer, Musheerabad Mandal (first Respondent).

2. The case, in brief, of the petitioners is that Mohd. Abdul Rahim and Mohd.

Ghousuddin were the original pattedars of a large extent of land in S.No.60/1 of Nampally village and that they sold that land to A.Ramakrishna under a registered sale deed dated 19-6-1963 and that A.Ramakrishna sold 20,000 square yards of land to Mohd. Basalatullah under a registered sale deed dated 16-09-1963 who subsequently sold parts thereof to B.Raghavender, R.Narsing Rao & G.Bal Raj and M.Lakshmi Bai (5th petitioner) under registered sale deeds dated 25-10-1966, 03-05-1966 and 16-06-1997 and that B.Raghavender sold the land purchased by him to the petitioners and others under registered sale deeds dated 16-11-1991, 23-02-1991 and 26-02-1991, but without keeping that fact in view first respondent on an erroneous impression that the land in their possession, purchased by them under registered sale deeds from B.Raghavender, issued the impugned notices, as if it belongs to the government, directing them to vacate the land within 7 days of receipt of the notice.

3. First respondent filed his counter affidavit alleging inter alia that 413 square meters in T.S.No.15, 266 square meters in T.S.No.17 and 322 square meters in T.S.No.18 in Block-C, Ward No.47, in the occupation of the petitioners, belong to the Government, as those lands were found to be government lands during the Town Survey taken up under A.P.Survey & Boundaries Act, 1923 (hereinafter referred to as '1923 Act'), in respect of the twin cities of Hyderabad and Secunderabad between 1963 to 1976. Since petitioners claim that they purchased land in S.No.60/1, and since the land in respect of which notices are issued is S.No.58/P correspond to T.S.Nos.15, 17 and 18 of Block-C, Ward No.47 of Nampally, they are not entitled to any relief, more so because they rushed to the Court without issuing a reply and without exhausting the remedies under the Act.

4. The main contention of the learned counsel for petitioners is that since the petitioners and their predecessors-in-title have been in long standing possession of the land in respect of which the notices impugned are issued, and since there is nothing on record to show that notice of survey said to have been conducted is served either on the petitioners or on the predecessors-in-title of the petitioners and since all the documents relied on by the petitioners are registered documents, this is a case of bona fide dispute relating to the title of the land, and so first respondent by taking a unilateral decision that that land belongs to Government, erroneously

issued notices under Section 7 of the Act, by strongly relying on **GOVT. OF A.P. v. THUMMALA KRISHNA RAO** in support of his contention that when there is a bona fide dispute relating to title, revenue authorities cannot invoke the provisions of the Act to take possession of the land from the alleged encroacher. Relying on **RAVIPUDI ABBAYYA v STATE OF A.P.** and **KISHAN CHAND FOUNDATION TRUST v. DISTRICT COLLECTOR, HYDERABAD DIST.** he contended that since the Government by merely relying on the entries in Town Survey and Land Register (T.S.L.R.) claim title to a land, as the same per se does not confer title to the Government, and since prima facie there is nothing except the entry in the T.S.L.R. to show that the land, in respect of which the notices impugned are issued, is Government land, and since those notices issued to the petitioners are not strictly in accordance with Section 7 of the Act, as the contents thereof do not disclose that they are show cause notices, petitioners had to approach this Court. He contended that in the event of this Court coming to a conclusion that petitioners approaching this Court without availing the remedies open to them under the Act is improper, they may be afforded an opportunity to give a reply to the notices issued to them because the stay granted by this Court is operative from the date of filing of the petition till today.

5. The contention of the learned Assistant Government Pleader is that since petitioners are found to be in possession of the land belonging to the Government, notices impugned were issued to them and since petitioners rushed to Court even without giving a reply to the said notices their contention relating to the bona fide dispute relating to title cannot be accepted.

6. In reply, the contention of the learned counsel for petitioners is that since the documents filed along with the counter affidavit of the first respondent disclose existence of houses, as house numbers are mentioned therein, and since it is alleged that the town survey took place between 1963 to 1976 prima facie long standing possession of the petitioners and their predecessors-in-title can be presumed.

7. Petitioners are claiming title to the land in S.No.60/1. The documents filed along

with the counter affidavit disclose that the new Town Survey Nos.15, 17 and 18 correspond to old S.No.58/P. It is no doubt true that existence of structures in the Door

Nos.5-5-212/10, 5-5-212/8 and 5-5-212/7 is found in the copies of the T.S.L.R. produced along with the counter affidavit of the first respondent. The last column thereof discloses Door

Nos.5-5-212/10 and 5-5-212/8 as encroachments and Door

No.5-5-212/7 it is shown as vacant land, without mention of 'encroachment'. From the contentions raised, the alternative plea of the petitioners seems to be that they have perfected their title to the land in their possession by adverse possession. Adverse possession is a question of fact to be proved by the person claiming title thereby, since possession for long time per se, cannot be treated as adverse. In **Thummala Krishna Rao** case

(1 supra) strongly relied on by the learned counsel for the petitioners, the dispute was with regard to a property over which the Osmania University laid a claim. From paragraph 7 of the said judgment it is seen that a suit filed by that University was dismissed on the ground of limitation, since Nawab Habibuddin the vendor of Thummala Krishna Rao was found to have encroached the property more than 12 years prior to the date of suit and as the University was never in possession of the property at any time within that period. The apex Court observed that the University, which failed to recover possession of the property by filing a suit, had activated the Government to evict the Nawab Habibuddin and his transferees summarily by invoking the provisions of the Act. In those circumstances, it was held that it was not open to the government to evict the persons in long standing possession by taking recourse to the provisions of the Act. The following observation in para-8 of the said judgment is relevant for the purpose of this petition.

> "It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide."

Petitioner, even without sending a reply to the notices served on them, cannot expect the Government to read their minds and take a decision whether to proceed further under the provisions of the Act or not.

8. In **RAVIPUDI ABBAYYA** case (2 supra) relied on by the learned counsel for petitioners, a learned Judge of this Court considered the provisions of the Act and held that the Government can invoke the provisions of the Act only when the land belongs to it. In **KISHAN CHAND FOUNDATION TRUST** case (3 supra) relied on by the learned counsel for petitioners, after a reply to the notice under Section 7 of the Act was issued, an order under Section 6 of the Act directing his eviction was passed. The writ petition was filed questioning the said order. The question for consideration in that case was whether in the facts and circumstances of that case Government officials were right in taking recourse to the provisions of the Act. As stated earlier, petitioners even without sending a reply to the notices served on them came to this Court through this petition, and so that decision has no application to the facts of this case. Had the petitioners sent replies to the notices served on them, the Mandal Revenue Officer (first respondent) could take a decision whether to drop the proceedings or to issue notice under Section 6 of the Act. So, petitioners, even without issuing a reply to the notices served on them, presume that the respondents have no jurisdiction to invoke the provisions of the Act in respect of a land, which is in old S.No.58/P, when they are not claiming any title or right over any part of the land in that old S.No.58/P, but are claiming title to the land in S.No.60/1. A person purchasing land from a private individual can encroach into a Government land. So, the question would be whether the petitioners who claim to have purchased land in S.No.60/1 are in occupation of S.No.58/P belonging to the Government, because petitioners failed to produce any document to show that they have a right or title over any part of the land in old S.No.58/P and since all the documents relied on by them relate to S.No.60/1 only. Therefore, I am unable to agree with the contention that there is a bona fide dispute relating to title between the petitioners and the Government, and that they can directly approach this Court even without issuing a reply to the notices received by them and even without exhausting the remedies open to them under the Act.

9. The contention of the learned counsel for petitioners that petitioners should be afforded an opportunity to give a reply to the impugned notices cannot be accepted since they, who thought it fit to move this Court, without sending a reply to the

notices impugned, should know and take the consequences for their failure. If the petitioners felt that they had acquired title to the land in respect of which the impugned notices were issued to them, they should have filed a suit for declaration of their title and the consequential reliefs.

10. Since the notices impugned are issued in respect of the land in S.No.58/P and since the documents relied on by the petitioners relate to S.No.60/1, petitioners, who did not even send a reply to the notices impugned are not entitled to any relief.

11. Hence, the writ petition is dismissed with costs.

(C.Y.Somayajulu, J.)

Date: 15-09-2005

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